

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Robert Carl Ware,

Plaintiff,

v.

Phillip Thompson, *Sheriff*; Mark Lazarus,
Chairman Horry County Council [sic];
Tom Fox, *Director J.R.L. Det. Ctr.*;
Joey Johnson, *Major J.R.L. Det. Ctr.*;
Southern Health Partners; Chris Gilbert,
Medical Director; Doctor Cross;
Larry B. Hyman, *Judge 15th Judicial
Circuit*;

Defendants.

Civil Action No. 6:16-269-RMG

ORDER

This matter is before the Court on the Report and Recommendation of the Magistrate Judge, recommending summary dismissal of Judge Larry B. Hyman from this action without service of process. Plaintiff has filed no objections. For the following reasons, the Court adopts the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a de novo determination of those portions of the R&R to which specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*

Plaintiff alleges denial of medical care, deliberate indifference to serious medical needs, and an inmate attack. He also complains about a ruling (the denial of his motion to “fire” his trial

counsel) issued by Judge Hyman during Plaintiff's criminal case. Judge Hyman is a judge of the Circuit Court for Horry County. He is "absolutely immune from a claim for damages arising out of his judicial actions." *Chu v. Griffith*, 771 F.2d 79, 81 (4th Cir. 1985). Therefore, the Court summarily dismisses Judge Hyman without service of process and recommits this matter to the Magistrate Judge for consideration of Plaintiff's remaining claims.

The Court also addresses a factual issue not material to the Magistrate Judge's recommendation but important for service of process on Plaintiff. South Carolina inmate records indicate that Plaintiff was convicted of murder and that his sentence of life without possibility of parole began on August 8, 2014. Plaintiff alleges that he arrived at the J. Reuben Long Detention Center "on or about" August 11, 2014. Plaintiff was admitted to the Kirkland Correctional Institution in Columbia, South Carolina on January 15, 2015. The Complaint was filed on January 28, 2016, well after Plaintiff was admitted to Kirkland. Resultantly, the Report and Recommendation, which was mailed to him at the J. Reuben Long Detention Center on February 22, 2016, was returned as undeliverable. (Dkt. No. 14.) The Court admonishes Plaintiff that it is his responsibility to update his address with Court. Plaintiff must keep the Clerk of Court advised in writing if his address changes for any reason, so as to assure that orders or other matters that specify deadlines will be received. Future failures to comply with this responsibility may result in dismissal of his case.

For the foregoing reasons, the Report and Recommendation of the Magistrate Judge is **ADOPTED** as the Order of this Court, Judge Larry B. Hyman is **DISMISSED WITHOUT PREJUDICE** and **WITHOUT SERVICE OF PROCESS**, and this matter is **RECOMMITTED** to the Magistrate Judge for further proceedings. **IT IS FURTHER ORDERED** that the Clerk

shall update Plaintiff's address on the docket to Robert Carl Ware, SCDC ID# 00366707, Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'R. Gergel', is written over a horizontal line.

Richard Mark Gergel
United States District Court Judge

February 24, 2016
Charleston, South Carolina